Law, status and agency in the Roman provinces

LAW, STATUS AND AGENCY IN THE ROMAN PROVINCES:

THOUGHTS FROM EAST AND WEST*

1. Introduction

Roman law was once considered a key instrument of imperial rule. It was thought to have been imposed by Rome in an effort to civilize the many and varied subject communities of the Roman empire; at the very least, Roman citizens were expected to utilize Roman law. This, indeed, was a key tool — both ideological and practical — in the imperial project, the method *par excellence* by which a degree of unification could be achieved. This project of unification culminated in the *Constitutio Antoniniana* on 11th July 212 CE,[1] Caracalla's universal grant of citizenship, by which all free inhabitants of the empire suddenly had access to and — it was generally thought — therefore used Roman law.[2] This entailed the death of local law: either through integration, or downgrading it to mere 'custom'.[3] To a large degree, these

* An early version of the following remarks was presented at the seventh meeting of the *Ancient Law in Context Network* at the University of Edinburgh (October 2016). We thank the participants for helpful remarks, and in particular Paul du Plessis for commenting on our manuscript. We would also like to thank the anonymous reviewers of *Past & Present* for their very helpful suggestions.

[1] For the text and exact date, now see P. van Minnen, 'Three Edicts of Caracalla? A New Reading of P.Giss. 40', *Chiron* xlvi (2016).

[2] Going back to R. Sohm, *Institutionen. Geschichte und System des römischen Privatrechts* (Leipzig, 1911), 130: 'Ein Kaiser, ein Reich, ein Recht.'

[3] The fate of local legal traditions post-*CA* has provoked a huge amount of debate: for a sample of views, see E. Schönbauer, 'Reichsrecht, Volksrecht und Provinzialrecht: Studien über die Bedeutung der Constitutio Antoniniana für die römische Rechtsentwicklung', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* lvii (1937); J. Mélèze-Modrzejewski, 'La règle de droit dans l'Egypte romaine', in D. H. Samuel (ed.), *Proceedings of the Twelfth International Congress of Papyrology* (Toronto, 1970); M. Amelotti, 'Reichsrecht, Volksrecht, Provinzialrecht: Vecchi problemi e nuovi documenti', *Studia et Documenta Historiae et Iuris* lxv (1999). The father of scholarship on *Reichsrecht und Volksrecht* is naturally L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs: mit Beiträgen zur Kenntniss des griechischen Rechts und der spätrömischen Rechtsentwicklung* (Leipzig, 1891).

understandings were the product of contemporary European projects of legal unification and even empire building: The past could provide a model for modern ambitions.[4]

This model has come under increasing pressure for a number of years now. The extent to which Rome really wanted to produce a single legal framework for the empire, or whether she did at all, has come under severe scrutiny,[5] and one might be pushed to find staunch advocates for such a clear-cut, empire-wide approach in today's modern scholarly community. Some of the assumptions underlying this model have, nevertheless, been rather more persistent, most notably the idea of a unity to Roman law in the early empire that can be assumed and examined across a wide geographic area. Some notion of imposition in certain areas also remains tenaciously in vogue.

And yet there have been dramatic shifts in the study of Roman law in recent years that are beginning to turn even these last assumptions on their heads. One of the most influential comes as part of a general boom in historical studies on 'legal pluralism' or 'multi-legalism', and the Roman empire has not been neglected within this broader field. Legal pluralism entails that in a given society multiple systems of normative orderings can and very often do exist, and that more than one of these orderings may be described as 'law'.[6] A couple of effects of this should be noted. First, there is an acknowledgment that 'law' can exist that is not intrinsically tied to the state — there may be a body of law that is not 'state law'. In terms of the Roman empire, this typically has the effect of making us rethink the status and authority of 'custom' (and

[4] On the scholarly history, see K. Tuori, 'Legal Pluralism and the Roman Empires', in J. W. Cairns and P J. du Plessis (eds.), *Beyond Dogmatics. Law and Society in the Roman world* (Edinburgh, 2007); W. Ernst, '*Non quia ius, sed quia Romanum* – Mommsen und die Rechtswissenschaft seiner Zeit', in I. Fargnoli and S. Rebenich (eds.), *Theodor Mommsen und die Bedeutung des Römischen Rechts* (Berlin, 2013).

[5] Explicitly questioned by H. Galsterer, 'Roman Law in the Provinces: Some Problems of Transmission', in M. H. Crawford (ed.), *L'impero romano e le strutture economiche e sociali delle province* (Como, 1986).

[6] M. Galanter, 'Justice in Many Rooms. Courts, Private Ordering, and Indigenous Law', *Journal of Legal Pluralism* xix (1981) is still extremely influential; for recent introductions to legal pluralism, see P. S. Berman, 'The New Legal Pluralism', *Annual Review of Law and Social Science* v (2009); I. Shahar, 'State, Society and the Relations Between Them: Implications for the Study of Legal Pluralism', *Theoretical Inquiries in Law* ix (2008); on its applications to the ancient world, see J. Pölönen, 'The Case for a Sociology of Roman Law', in M. D. A. Freeman (ed.), *Law and Sociology* (Oxford, 2006).

indeed why we label what we do 'custom' as opposed to 'law').[7] Second, it allows for the co-existence of multiple legal traditions within a community and reframes the focus of study onto how and why people chose to use a feature of a particular legal tradition when they did, rather than identifying one or other as prevailing.[8]

The overarching result has been a greater awareness of the multitude of legal traditions that continued to function in communities within the Roman empire, and a greater appreciation of the need to understand exactly how Romans and subjects alike managed these situations. Local context is typically emphasized in all this. This approach has also sometimes been pushed to the point that any kind of unity, or a concrete imperial legal tradition is denied in favour of this plurality.[9] However, there is at the very least an idea or awareness of something that is designated 'Roman law' across the provinces, and it is reasonable to seek to identify similarities in how subject communities and individuals within them conceptualized, accessed and deployed it.

Many of the questions addressed in these recent studies are, at least in principle, familiar to historians who have followed debates on 'Romanization' in the past few decades. Just what 'becoming Roman' meant is understood very differently nowadays from how it used to be throughout the larger part of the twentieth century. Emphasis on provincial at the expense of imperial agency has been one key element in this reinvention of an old concept; recognition of local traditions and hybrid forms has been another.[10] Parallel to the acceptance of concepts like

[7] See C. Humfress, 'Law and Custom under Rome', in A. Rio (ed.), *Law, Custom, and Justice in Late Antiquity and the Early Middle Ages. Proceedings of the 2008 Byzantine Colloquium* (London, 2011).
[8] One area of study within this is people's ability to 'forum shop': see C. Humfress, 'Thinking Through Legal Pluralism: "Forum Shopping" in the Later Roman Empire', in J. Duindam et al. (eds.), *Law and Empire. Ideas, Practices, Actors* (Leiden, 2013).
[9] Tuori, 'Legal Pluralism', leans this way; see also A. Z. Bryen, 'Judging Empire: Courts and Culture in Rome's Eastern Provinces', *Law and History Review* xxx (2012).
[10] See the contributions by G. Woolf, *Becoming Roman. The Origins of Provincial Civilization in Gaul* (Cambridge, 1998); G. Alföldy, 'Romanisation — Grundbegriff oder Fehlgriff? Überlegungen zum gegenwärtigen Stand der Erforschung von Integrationsprozessen im römischen Weltreich', in Z. Visy (ed.), *Limes XIX* (Pécs, 2005); J. M. Madsen, *Eager to be Roman. Greek Response to Roman Rule in Pontus and Bithynia*

legal pluralism, it is now hardly a controversial statement that there existed in the Roman empire multiple degrees of interaction between local and Roman culture, and multiple versions of what 'Roman' meant in the first place.

Another similarity to developments in the history of law lies in the possible breaking points. Much like the fractionalization of law can lead to doubts about the very existence of an imperial legal tradition, the reframing of Romanization in terms of local traditions and provincial agency has led some scholars to question the very reality of a significant cultural influence exerted by Rome.[11] One response to this challenge has been to eradicate the difference between Roman and other cultures altogether and regard the Roman *oikoumene* as 'one single cultural container', while nonetheless, and somewhat paradoxically, attempting to profit from insights into the 'transformative capacities of intercultural encounters'.[12] Other, more historically oriented approaches consist in developing a — perhaps sometimes all too peaceful — image of provincials actively embracing, on their own terms and for their own purposes, social and cultural models that lie at the very heart of empire, thereby contributing to an imperial ideology much more thoroughly than could have been achieved by any form of direct pressure.[13] Thus, from the ashes of an old paradigm may arise a thorough reformulation of earlier assumptions that employs a bottom-up perspective, but does not lose track of the realities of an imperial world order.

Our aim is to connect these dots and re-introduce the study of law in the Roman provinces into debates on Romanization 'from the periphery'. To do so, we will focus on individuals using

(London, 2009); R. Haeussler, *Becoming Roman? Diverging Identities and Experiences in Ancient Northwest Italy* (London, 2013).

[11] See P. Le Roux, 'La romanisation en question', *Annales. Histoire, Sciences Sociales* lix (2004); M. Sartre, 'Romanisation en Asie Mineure?', in G. Urso (ed.), *Tra Oriente e Occidente. Indigeni, Greci e Romani in Asia Minore* (Pisa, 2007).

[12] M. J. Versluys, 'Understanding Objects in Motion. An *Archaeological* Dialogue on Romanization', *Archaeological Dialogues* xxi (2014), 12, 14.

[13] See C. Ando, 'Imperial Identities', in T. Whitmarsh (ed.), *Local Knowledge and Microidentities in the Imperial Greek World* (Cambridge, 2010); B. Eckhardt, 'Romanization and Isomorphic Change in Phrygia: The Case of Private Associations', *Journal of Roman Studies* cvi (2016).

Roman law in their private dealings before the *Constitutio Antoniniana*. We will ask how they used Roman law, why they did so, and whether or not their usage can be regarded as provincial agency, as appropriation rather than a mere adaption of Roman concepts. These questions by necessity limit the evidence we shall employ to private legal documents. While the Eastern parts of the empire — in particular Egypt and, to a lesser extent, the Near East — offer a significant number of such documents, they are rather rarer in the Western provinces. This reflects another traditional differentiation, namely between the reception of Roman law in those regions where there was a functioning legal system before the Roman conquest (i.e. the East) and those where the very idea of a legal system would have been brought to the region by Rome (i.e. the West). An additional aim of this article is to challenge this dichotomy and look for common ground. We will argue that at least in the first decades after provincialization, individuals' reactions to the availability of Roman legal instruments were rather similar in the Eastern and the Western parts of the empire.

As the Eastern evidence has been much more prominent as a test field for new approaches, we shall first develop our understanding of the reception of Roman law based on this evidence; then we shall attempt to apply these findings to the fewer and more standardized documents from two Western provinces, Dacia and Britain. We will argue that differences in content notwithstanding, the Western evidence can indeed be understood along the same lines as the Eastern evidence, although the conclusion will take into account possible objections regarding the different areas of law covered by our documents.

2. The East: Arabia and Egypt

The overwhelming majority of on-the-ground evidence for legal practice in the Roman east stems from Egypt, and juristic papyrologists have carved out a highly specialized place for

their science within the larger landscape of law in the empire. This is justified by the extent and nature of the evidence, but the extent to which we may generalize from Egypt to the rest of the empire remains a contentious issue. Remarks here will be confined to its value for understanding the legal culture of the empire specifically. We suggest that its pre-Roman history does make Egypt in some ways rather unusual, but there are nonetheless consistencies in attitude towards legal institutions that find direct reflections in evidence from elsewhere.

Annexed as a province in 30 BCE, after Octavian's victory in the battle of Actium, Egypt already had a highly-developed infrastructure of its own by the time the Romans took over from the Ptolemies, and a rich legal history that went along with it. At the local level in particular much of the pre-existing administrative structures were maintained, but the changes that came with the Romans should not be underestimated. A wholesale overview is beyond the scope of this article,[14] but jurisdictional issues are highly significant here. In short: no peregrine courts survived from the Ptolemaic era, and the Roman imperial government had a monopoly on jurisdiction in the province.[15] This did not, however, mean that Egypt became a uniform landscape of Roman law or that the legal culture of the Ptolemaic era withered and died: quite the contrary. Roman courts consistently endorsed pre-existing local legal traditions within their courts, leading to exactly the kind of 'legally pluralistic' landscape outlined above even at the very heart of the Roman jurisdiction — i.e. in their court. Furthermore, while Roman citizens stuck more closely to Roman law in matters concerning inheritance, status and family, they otherwise tended more towards using Greek forms that had become the common, mixed parlance of the province.[16] In short: Rome imposed a uniformity of jurisdiction, but not of law.

[14] See A. K. Bowman and D. Rathbone, 'Cities and Administration in Roman Egypt', *Journal of Roman Studies* lxxxii (1992) for an explicit demonstration of the changes brought by the Romans to laws and magistrates.
[15] Any officials familiar from the Ptolemaic administration were fully integrated into the Roman one: see J. L. Alonso, 'The Status of Peregrine Law in Egypt: "Customary Law" and Legal Pluralism in the Roman Empire', *Journal of Juristic Papyrology* xliii (2013).
[16] See J. L. Alonso, 'Juristic Papyrology and Roman Law', in P. du Plessis, C. Ando and K. Tuori (eds.), *The Oxford Handbook of Roman Law and Society* (Oxford, 2016), 63–65 on Roman citizens in Egypt.

Nevertheless, Egypt was not immune to the kind of processes that we see occurring elsewhere in the East. In particular, we might note the increasing tendency of provincials to cite the provincial edict or prior decisions by Roman judges in their petitions.[17] The extremely famous case of the Dionysia papyrus (P. Oxy ii. 237; 186 CE) is a good example of this phenomenon: Dionysia — a non-Roman citizen — in a long, protracted dispute with her father cites several decisions in previous cases, along with the opinion of a *nomikos* (a group to be discussed later). This was a growing tendency in Roman Egypt, which even led to one former prefect advising an unsure Roman judge to simply follow the majority of precedents when in doubt (P. Mich. Inv. 148). Provincials had to make an effort to have these kinds of precedents located if they wanted them included in their petitions, and presumably did so as they believed that they would lend authority to their cases. This hints at the kind of pattern we will see later elsewhere: an awareness on the part of canny individuals that citing a Roman authority in a legal situation — here a decision rather than a legal form — could have a favourable effect on a current Roman judge.[18]

Obvious instances of Roman legal formulae become widespread in Egypt relatively late. The best-known example of this is *stipulatio*, a specific form of Roman contract: A matching question and answer which constituted a formal pledge. In Roman lawyer-speak this was a *stricti iuris* (i.e. 'strict law' as opposed to 'good faith') and unilateral contract. After the *Constitutio Antoniniana,* the inhabitants of Egypt embraced *stipulatio* with a passion, inserting it into almost any and every contract with enthusiasm when it was legally redundant.[19] *Stipulatio* also became more and more common elsewhere in the East post-*CA*. For example,

[17] See R. Katzoff, 'Sources of Law in Roman Egypt: The Role of the Prefect', in *Aufstieg und Niedergang der römischen Welt* II, 13 (1972) and H. F. Jolowicz, 'Case Law in Roman Egypt', *The Journal of the Society of Public Teachers of Law* (1937) on the role of precedents.
[18] Bryen, 'Judging Empire', on this tendency and its effects.
[19] See Yiftach-Firanko, 'Law in Graeco-Roman Egypt', 554. Romanists typically refer to this as the 'degeneration' or 'atrophy' of *stipulatio:* see, for example, F. Schulz, *Classical Roman Law* (Oxford, 1951), 476 and R. Zimmermann, *The Law of Obligations. Roman Foundations of the Civilian Tradition* (Oxford, 1996), 78–79.

it was increasingly deployed in a variety of contracts from Dura-Europos and the Middle Euphrates: in sales (P. Dura 26, P. Euphr. 6–9), a deposit (P. Dura 29), and even a divorce document (P. Dura 31).

But even before the *CA*, *stipulatio* was already being used elsewhere in the Eastern provinces. Two of the inhabitants from the village of Ossa, in the environs of Dura-Europos, also inserted a *stipulatio* clause with the added *bona fide* element into their divorce deed in 204 CE.[20] This is not so long after the region had been annexed: Dura-Europos itself seems to have come under Roman rule after the campaigns of Lucius Verus in 165 CE. But the most notable examples of *stipulatio* pre-*CA* come from a different region: Roman Arabia, and the archives of Babatha and Salome Komaise.[21] These caches of legal and administrative documents belonged to two Judaean women who lived in a village called Maoza. Formerly part of the Nabataean kingdom, the region was annexed as a Roman province in 106 CE, [22] and the documents date from both before and after the take-over (93–132 CE). The vast majority of the people in these archives were without doubt not Roman citizens, but interacted regularly with Roman institutions in their legal dealings. The archives thus provide an unusual and vital resource for tracing shifts in private legal practice under Roman rule, and a key check on the more-or-less peculiar situation that we have outlined for Egypt.

Returning to *stipulatio*: Six documents in these Arabian archives contain the clause, and are the earliest examples of its use in an Eastern province: A deed of deposit (P. Yadin 17), two

[20] P. Dura 31, l. 43: πίστι ἐτερώτησον ἀλλήλοις καὶ ὡμολόγησαν ἀλλήλοῖς (in good faith they have questioned each other and have agreed with each other).
[21] For the Greek Babatha papyri, see N. Lewis (ed.), *The Documents from the Bar Kokhba Period in the Cave of Letters. Greek Papyri* (Jerusalem, 1989); the Nabataean and Jewish Palestinian Aramaic documents are collected in Y. Yadin et al. (eds.), *The Documents from the Bar Kokhba Period in the Cave of Letters. Hebrew, Aramaic and Nabataean-Aramaic Papyri* (Jerusalem, 2002). For Salome Komaise's archive, see H. M. Cotton and A. Yardeni (eds.), *Aramaic, Hebrew and Greek Documentary Texts from Naḥal Ḥever and Other Sites: with an appendix containing alleged Qumran texts (The Seiyâl Collection II)* (Oxford, 1997).
[22] On the circumstances of the annexation, see F. M. Al-Otaibi, *From Nabataea to Roman Arabia: Acquisition or Conquest?* (Oxford, 2011), 63–85 and R. Wenning, 'Das Ende des nabatäischen Königreichs', in A. Invernizzi and J.-F. Salles (eds.), *Arabia antiqua. Hellenistic Centres around Arabia* (Rome, 1993), 86–93.

marriage contracts (P. Yadin 18, P. Hever 65), a concession of rights (P. Yadin 20) and two contracts which set up some sort of share-cropping arrangement (P. Yadin 21 and 22).[23] There is rarely any reason for the parties to need to use *stipulatio* in order to make the contract valid. To take P. Yadin 17 as an example: The deposit, if we are choosing to think in terms of Roman law, was in itself a bilateral contract in good faith (*bonae fidei*), i.e. a completely different kind of contract from *stipulatio*. Inserting this clause at the end made not a jot of difference to the legal validity of the contract. When we actually look at the typical form of the *stipulatio* in these documents, we see further manglings: that in P. Yadin 18 reads, 'The question was asked in good faith (*pistei*) and it was acknowledged in reply that these things were thus done well.'[24] Reference to good faith (*bona fide*) is therefore inserted into a *stricti iuris* contract: In traditional terms, these provincials simply get it wrong. And yet they still thought it important to insert this form into their documents and — in the case of Arabia and Dura-Europos — did so within two generations of the annexation. Egypt's slower uptake may be due to the rich prior legal tradition previously discussed. But the basic attitude is rather similar: Provincials in their use of this contractual form may 'get it wrong' or include it erroneously from a formal standpoint, but they persist tenaciously in doing so, adding this particularly pithy, neat Roman formulation across their documentation. They thus usurp the form and deploy it in their contracts so that it becomes a part of the local legal culture. This may have been because they thought this made their documents enforceable in a Roman legal forum, or simply more accessible to a Roman audience should they eventually need to use them as evidence in court.

[23] On P. Yadin 21 and 22 as a share-cropping arrangement, see R. Katzoff, '"P. Yadin" 21 and Rabbinic Law on Widows' Rights', *Jewish Quarterly Review* xcvii (2007); A. Radzyner, 'P. Yadin 21–22: Sale Or Lease?', in R. Katzoff and D. Schaps (eds.), *Law in the Documents of the Judaean Desert* (Leiden, 2005); M. Broshi, 'Agriculture and Economy in Roman Palestine: Seven Notes on the Babatha Archive', *Israel Exploration Journal* xlii (1992), 233–34.

[24] P. Yadin 18, ll. 66-67 (cf. 27-28 in the upper text): πίστ[ε]ι [ἐπη]ρωτήθη καὶ ἀνθωμολογήθ[η ταῦ]τα οὕτως καλῶς γείνεσθαι.

The Arabian archives merit further discussion as a key example of on-the-ground evidence for private legal transactions in the immediate aftermath of Roman annexation: indeed, they have become the go-to evidence on this topic outside of Egypt and for good reason. There are various basic formal aspects of the documents that seem to have changed after the area was made into a province: Most notably dating formulae, language choice and the physical form of the documents.[25] Many of the papyri are so-called 'double documents': the text is written out twice on the same sheet of papyrus; the upper half is then folded up and secured so that it can later be used as a check on forgery against the outer. These are not new to the area, but practice changes slightly after Rome's take-over: the tendency towards abbreviating the upper texts is reversed, and it starts to become fuller once again. This may have been connected with quite precise directions from the Roman administration as to how documents should be drawn up, though no such requirements survive from this region.[26]

Language choice is a rather more complex issue. That Greek was the language of the administration in the East, and that there was a tendency towards writing legal documentation in Greek under Rome's rule is well known. This is often considered to have been at the expense of native languages. Egypt is again a slightly different case since there was already a longstanding Greek language legal tradition by the time Rome came along; however, the Demotic document, representing another native tradition, did gradually die out in the Roman era.[27] The process by which the language shift took place should, however, be emphasized: Namely, this was indeed a *process*, which took time. In Babatha's archive, the switch (almost)

[25] See E. A. Meyer, 'Diplomatics, Law and Romanisation in the Documents from the Judaean Desert', in Cairns and du Plessis (eds.), *Beyond Dogmatics* on Romanization in these aspects of the documents; see also H. M. Cotton, '"Diplomatics" or External Aspects of the Legal Documents from the Judaean Desert: Prolegomena', in C. Hezser (ed.), *Rabbinic Law in Its Roman and Near Eastern Context* (Tübingen, 2003) on their external features.
[26] Meyer, 'Diplomatics, Law and Romanisation', 63–73.
[27] On its demise see N. Lewis, 'The Demise of the Demotic Document: When and Why', *The Journal of Egyptian Archaeology* lxxix (1993); B. Muhs, 'The Grapheion and the Disappearance of Demotic Contracts in Early Roman Tebtynis and Soknopaiou Nesos', in S. L. Lippert and M. Schentuleit (eds.), *Tebtynis und Soknopaiu Nesos: Leben im römerzeitlichen Fajum* (Wiesbaden, 2005); U. Yiftach-Firanko, 'Law in Graeco-Roman Egypt: Hellenization, Fusion, Romanization', in R. S. Bagnall (ed.), *The Oxford Handbook of Papyrology* (Oxford, 2009).

completely to Greek documentation seems to have occurred in around 122 to 124 CE, sixteen to eighteen years after the annexation. During this intervening period, documentation continues to be written in native languages as well as in Greek. Indeed, there are five documents from the archive of various different types — sales contracts (P. Yadin 8 and 9),[28] a deed of gift (P. Yadin 7), a tenancy agreement (P. Yadin 6) and a marriage contract (P. Yadin 10) — written after the Roman annexation in either Nabataean or Jewish Palestinian Aramaic, and most of the Greek documents also have subscriptions in the principals' native languages. There was thus undeniably a continuing role for native language documents for quite some time after the initial transition to direct Roman rule.[29]

The switch to Greek in Arabia was not enforced — it was the result of active choices on the part of provincials, who mostly had little to no linguistic skills in this language.[30] This decision concerning the language of their documents had to do with a multitude of factors: Perceived (rather than actual) necessity, the desire to make one's case more accessible to a Roman official and even wanting to project some kind of elevated status by offering documentation in the language of the imperial authorities rather than one's native tongue. These considerations also affected documents that — at face value — had little to do with the Roman administration. P. Yadin 17 is a good illustration of this: in this deposit, written in Greek in 128 CE, Judah acknowledges having received three hundred denarii from his wife Babatha. Neither Judah nor Babatha seem to have been literate in Greek.[31] As such there was little reason a private transaction between the two of them should have been recorded in this language, let alone

[28] See H. I. Newman, 'P. Yadin 8: A Correction', *Journal of Jewish Studies* lvii (2006) on their identification as sales.
[29] J. Oudshoorn, *The Relationship between Roman and Local Law in the Babatha and Salome Komaise Archives. General Analysis and Three Case Studies on Law Of Succession, Guardianship, and Marriage* (Leiden, 2007), 84.
[30] See K. Czajkowski, *Localized Law. The Babatha and Salome Komaise Archives* (Oxford, 2017), 113–15 for an explanation of this change in terms of personal experience.
[31] It is explicitly stated in P. Yadin 15, l. 35 that Babatha 'did not know letters' (μὴ εἰδέναι γράμματα), the standard designation for illiteracy in these and the Egyptian papyri.

contained such Roman features as a *stipulatio* clause. There was therefore a trickle-down effect, as people began to take into account what might make their lives easier or their case more effective in the, possibly very unlikely, event that they ended up in a Roman court.

This attitude went beyond concerns of language. The archives provide detailed information about the ways in which the members of two particular families employed certain Roman legal instruments for their own ends, allowing us to extract concrete information about how individuals reacted to imperial rule. One famous example are the three blank copies of an *actio tutelae*, i.e. an action on guardianship, preserved in Babatha's archive (P. Yadin 28–30). The Roman flavour of these documents is immediately apparent:

> Between a plaintiff X, son of Y, and a defendant A for up to 2,500 denarii there shall be *xenokritai*. Since A, son of B, has exercised the guardianship of orphan X, concerning which matter the action lies, whenever by reason of this matter A is obligated to give or do [something] to X in good faith, the judges of this shall award judgment against A in favour of X up to 2,500 denarii, but if [such obligation] does not appear, they shall dismiss.[32]

This is written in Greek and whoever translated it has managed to render technical vocabulary (i.e. *xenokritai,* 'judges') accurately from a Latin original. There is some debate over what the original Latin term was: *recuperatores*, a board of judges that could include non-Romans, and was originally concerned with status; or *iudices peregrini*, foreign judges.[33] Either way, the

[32] P. Yadin 29 (texts of P. Yadin 28 and 30 are virtually identical): μ̣ε̣τ̣ᾰ̣ξὺ τοῦ δεῖνος [τοῦ] δ̣[εῖνος] ἐνκ̣αλοῦντος καὶ τοῦ̣ [δεῖνος ἐν] καλουμένου μέχρι (δηναρίων) [Β]φ ξεν̣ο̣κρίται ἔστωσαν ἐπε̣[ὶ] ὁ̣ δεῖνα τοῦ δεῖνος ὀ̣ρφ̣α̣νοῦ [πι]τ[ρ]ο̣[π]ὴ[ν] ἐχείρ[ι]σεν, περὶ οὗ̣ πράγμ[ατ]ος ἄγεται, ὅταν διὰ τοῦτο τὸ πρᾶγμα τὸν δεῖνα τῷ̣ δεῖνι δοῦναι ποιῆσαι δέῃ ἐκ καλῆς πίστεω̣ς, τούτου οἱ ξενοκρίται τὸν δ̣[εῖ]να τῷ̣ δεῖνι μέχρει δην(αρίων) Βφ κατακρεινάτωσα̣ν, ἐὰν δ̣[ὲ μ]ὴ φαίνηται ἀπολυ̣σάτωσ̣α̣[ν]. Translation is that of Lewi, *Documents from the Bar Kokhba Period*; *xenokritai* here has been left untranslated.

[33] Both could be translated by *xenokritai*: see *Corpus Glossariorum Latinorum* iii, 336, ll. 44–45; 528, ll. 5–6; see D. Nörr, 'The *xenokritai* in Babatha's Archive (Pap. Yadin 28-30)', *Israel Law Review* xxix (1995); *idem*, 'Zu den Xenokriten (Rekuperatoren) in der römischen Provinzialgerichtsbarkeit', in W. Eck and E. Müller-Luckner (eds.), *Lokale Autonomie und römische Ordnungsmacht in den kaiserzeitlichen Provinzen vom 1. bis 3. Jahrhundert* (Munich, 1999).

translator had the requisite skills to render it accurately. The original may have been found in the provincial edict, though also plausible is that the translation was at one further remove, and this version came from a Greek handbook of formulae available in the region.[34] These often gathered together forms and decisions on similar topics, and seem to have been used relatively regularly in the provinces to aid Roman officials in their day-to-day duties.[35] Also of note is that this is a blank, standard formula that was in the possession of a private person — in triplicate at that. Comparable examples are a rescript from Gordian III (P. Tebt. ii. 285, 238 CE) which was found in another private archive from Egypt, belonging to a certain Aurelia Sarapias,[36] and a formula from the Sulpicii archive (T. Sulpicii 31, first century CE). The latter, however, is not a blank model like that belonging to Babatha and is also from Puteoli in Italy, so helps us little with provincial practice. Babatha's formula is unique.

The question, then, is why Babatha had it. A series of summonses and petitions from the archive inform us that Babatha had an ongoing dispute with the guardians of her orphaned son Jesus over the amount of maintenance that they were paying her for her son's upkeep (P. Yadin 12–15).[37] This dispute was intended to be taken to the court of the Roman governor: A context for such an action on guardianship is therefore readily available. The problem is that under the accepted principles of Roman law, Babatha had absolutely no right to use this action, which

[34] For the view that it came from the edict, see E. Seidl, 'Ein Papyrusfund zum klassischen Zivilprozeßrecht', in *Studi in onore di Giuseppe Grosso* 2 (Torino, 1968), 348; Nörr, '*Xenokritai* in Babatha's Archive', 89 and idem, 'Zu den Xenokriten', 269–70; for the handbook hypothesis, see A. Biscardi, 'Nuove testimonianze di un papiro Arabo-Giudaico per la storia del processo provinciale Romano', in *Studi in onore di Gaetano Scherillo* (Milan, 1972), 140–151.

[35] On the spread of such legal literature in Asia Minor, see G. Kantor, 'Knowledge of Law in Roman Asia Minor', in R. Haensch (ed.), *Selbstdarstellung und Kommunikation. Die Veröffentlichung staatlicher Urkunden auf Stein und Bronze in der römischen Welt* (Munich, 2009).

[36] See Oudshoorn, *Relationship between Roman and Local Law*, 339–40 for comparative comments; A. E. Hanson, 'The Widow Babatha and the Poor Orphan Boy', in Katzoff and Schaps (eds.), *Law in the Documents of the Judaean Desert* for broader comparison of the two archives.

[37] On this case, see H. M. Cotton, 'The Guardianship of Jesus son of Babatha: Roman and Local Law in the Province of Arabia', *Journal of Roman Studies* lxxxiii (1993); T. J. Chiusi, 'Babatha vs. the Guardians of Her Son: A Struggle for Guardianship – Legal and Practical Aspects of P.Yadin 12-15, 27', in Katzoff and Schaps (eds.), *Law in the Documents of the Judaean Desert*.

was restricted to the ward himself once he came of age, or to a new or co-guardian.[38] But Babatha does seems to have intended to use it: she acquired three copies of the *actio*, and kept hold of them.[39] It is worth emphasizing that she did not locate these herself, and we must posit the existence of some kind of *nomikos* or 'legal expert' in the province in order to explain how she managed to get hold of them in the first place and have stood any chance at understanding their contents. Her own, personal understanding of this Roman legal instrument was therefore likely to have been limited: she was relying on advice.

Such *nomikoi* or *pragmatikoi,* both typically translated as 'legal experts', are again well known from Egyptian papyri. For the most part, we find them advising Roman judges about legal practice: for example, in M. Chr. 84, the minutes of a trial before the prefect concerning an inheritance dispute, we find a *nomikos* called Artemidorus*,* with whom the prefect confers before giving his decision (l.5 and ll.23-24). A record of the decision of another prefect, M. Rutilius Lupus, in 114 CE shows a similar process: Lupus consults legal advisors before reaching a decision concerning the citizenship status of the sons of a soldier (M. Chr. 372, col. 3). And the services of such advisors were not just limited to Roman officials: the aforementioned Dionysia also cites the opinion of a *nomikos* in making her case (P. Oxy ii. 237, col. 8, ll.2-7). The activities of some sort of legal practitioners are thus well-known in the East,[40] and their services were available — and made use of — by provincials in making their

[38] See Oudshoorn, *Relationship between Roman and Local Law*, 334–36 on the possibility of a different guardian bringing the action in this case; cf. *Digest* xxvii. 3. 9. 4 (Ulpian, *Edict*, Book 25); Cotton, 'Guardianship of Jesus', 102–3 on Babatha's possible legal options.

[39] Possibly in order to use them as part of a later or second stage of proceedings. For variants of this possibility, see: Oudshoorn, *Relationship between Roman and Local Law*, 335–36; Chiusi, 'Babatha vs. the Guardians', 124; W. Turpin, '*Formula, cognitio*, and proceedings *extra ordinem*', *Revue internationale des droits de l'antiquité* xlvi (1999), 512.

[40] See D. Nörr, 'Pragmaticus', *Paulys Real-Encyclopädie der classischen Altertumswissenschaft* Supplement x (1965) on *pragmatikoi*; C. P. Jones, 'Juristes Romains dans L'Orient Grec', *Comptes-rendus des séances de l'Académie des Inscriptions et Belles-Lettres* cli (2007) for a list of attested *nomikoi*; R. Taubenschlag, 'The Legal Profession in Greco-Roman Egypt', in his *Opera Minora. Volume 2* (Warsaw, 1959), 161–65 and J. Hengstl, 'Rechtspraktiker im griechisch-römischen Ägypten', in J. Hengstl and U. Sick (eds.), *Recht gestern und heute. Festschrift zum 85. Geburtstag von Richard Haase* (Wiesbaden, 2006) on Egypt; Kantor, 'Knowledge of Law', 262 n. 58 on Asia Minor.

cases more effective in a Roman forum. In Egypt, this often amounted to using their skills to learn how to best persuade a Roman judge of the merits of their case. Such *nomikoi* were part and parcel of the local legal culture.

Coming back to Arabia, it is not such a leap to suppose that just such a legal practitioner somehow procured the copies of the *actio* for Babatha. They were thus thought relevant, even when she had no right to use them. Now we could simply explain this as being due to a poorly informed advisor in a legal backwater, or a misunderstanding of what we consider her rights should have been. But the point is that Babatha made the effort to inform herself about Roman legal traditions, and that she had every intention of utilizing a Roman legal instrument for her own purposes. If the intended audience were the Roman governor, this may have been to impress upon him her acquaintance with, willingness to engage with or (so she thought) rights within a Roman legal tradition. But this also had an impact on her opponents: The psychological effects of a foreign, Roman and seemingly official legal instrument should not be underestimated. But the basic point to note is that this provincial had access to the kind of networks that could secure her this Roman legal instrument, and she fully intended to use it in a way she 'should' not have been able to do for her own ends.

Furthermore, by appropriating an element of the imperial culture, whether this was a decision by a Roman official, a *stipulatio* clause or the *actio tutelae,* provincials like Babatha were also attempting to project an elevated status — either, again, to a Roman audience or to their fellow provincials. Roman law was not simply imposed, but became a tool that locals could use to advance towards their own, individual goals. In doing so, they created a local legal culture that included elements of Roman law and the expectation that these elements would be used in certain contexts. None of this was ever obligatory, but gradually worked its way in regional practice with the end result that locals produced their own, regionally specific idea of how Roman legal instruments could be used and what constituted 'Roman law' in the first place.

This could differ considerably from opinions of jurists at Rome or indeed from modern scholars' expectations, but it nevertheless constituted a local understanding of Roman law that had a real and practical application.

3. The West: Dacia and Britain

Egypt and Arabia offer not only a different legal historical background, but also a rather different climate from the Western provinces. Preservation of private documents in the West is rare, and so are opportunities to test the validity of an approach developed for the East in an area where Roman rule was, in general, much more visible and direct. All the more therefore depends on two dozen wax tablets (*tabulae ceratae*) from Alburnus Maior in Dacia (modern Roșia Montană in Romania), found in the eighteenth and nineteenth centuries.[41] The tablets, covering a time span from 139–167 CE, were originally arranged in (now only partially preserved) pairs of sometimes two, but mostly three (diptychs and triptychs). Like the documents of Babatha, they were bound together in a way that would make one version of the text accessible on first glance, while the other could only be read when the seal was broken and the strings removed. In the words of a *Senatus Consultum Neronianum* of 61 CE, the inner part thus preserved the trustworthiness (*fides*) of the outer.[42]

Dacia had become a Roman province at the same time as Arabia, in 106 CE, as a result of Trajan's conquests, and soon became an important acquisition not only because of the

[41] The texts are collected in I. I. Russu (ed.), *Inscripțiile Daciei Romane. Inscriptiones Daciae Romanae*. *Vol. I. Introducere istorică și epigrafică. Diplomele militare. Tăblițele cerate* (Budapest, 1975), no. 31–55 (henceforth IDR i). Further abbreviations on the following pages: FIRA = *Fontes iuris Romani anteiustiniani*; TH = *Tabulae Herculanenses*.

[42] Paulus, *Sententiae* v. 25. 6; cf. Suetonius, *Nero*, 17. A helpful inventory of *tabulae ceratae* and their findspots is provided by B. Hartmann, 'Die hölzernen Schreibtafeln im Imperium Romanum – ein Inventar', in M. Scholz and M. Horster (eds.), *Lesen und Schreiben in den römischen Provinzen. Schriftliche Kommunikation im Alltagsleben* (Mainz, 2015). The evidence from London (no. 28) is now significantly enhanced through the publication of R. S. O. Tomlin, *Roman London's First Voices. Writing Tablets from the Bloomberg Excavations, 2010–14* (London, 2016).

purported dimensions of the treasures brought to Rome in that very year, but also for its wealth of mineral resources. Alburnus Maior itself was first and foremost a mining district.[43] The existence and physical makeup of the tablets already hint at the impact of Roman law, for they follow, without exception, the standards set for tablets containing contracts by said *Senatus Consultum*: They are perforated not on the side, but at the top, bound together towards the middle by a string.[44] Inside, we do indeed find, again without exception, documents of a contractual nature, most frequently credit agreements, sales contracts and employment contracts.

Some aspects of these documents satisfy the expectations of modern legal scholars perfectly. Thus, IDR i. 40–42, the contracts of employment (*locatio conductio*), have been applauded as 'clearly structured', their drafting being 'precise and legally correct'.[45] Similarly, IDR i. 44, a contract recording the modification of an already existing partnership (*societas*) of two moneylenders in 167 CE, is completely in line with the regulations on such partnerships in classical Roman law.[46] And while the same tendency towards 'unnecessary' use of *stipulationes* can be detected in the Dacian as well as in the Eastern documents,[47] their wording conforms to how Gaius, our main source for legal formalities in the second century CE, envisaged it. Only the two moneylenders, both Roman citizens, use the terms *stipulatus est – spopondit* to describe the demand for and the giving of a promise, while non-Romans use

[43] See A. M. Hirt, *Imperial Mines and Quarries in the Roman World. Organizational Aspects 27 BC–AD 235* (Oxford, 2010), 74–76, 270–73.
[44] See for a description E. Pólay, 'Die Formalitäten der Urkunden der siebenbürger Wachstafeln', *Klio* liii (1971), 224–29.
[45] J. G. Wolf, 'Documents in Roman Practice', in D. Johnston (ed.), *The Cambridge Companion to Roman Law* (Cambridge, 2015), 67. On the nature of these contracts, which largely favor the employer, cf. G. Ciulei, 'Die Arbeitsverträge in den siebenbürgischen Wachstafeln', *Revue Internationale des droits de l'Antiquité* xxxviii (1991).
[46] See for detailed commentary E. Pólay, 'Ein Gesellschaftsvertrag aus dem römischen Dakien', *Acta Antiqua Academiae Scientiarum Hungaricae* viii (1960).
[47] See, with some legal explanations, E. Pólay, 'Die Obligationssicherheit in den Verträgen der siebenbürgischen Wachstafeln', *Klio* xl (1962).

formulae like *fide rogavit — fide promisit*. Gaius in fact states that the word *spondeo* was so tied to the Roman origins of the act that only Roman citizens could use it.[48]

The rather strict adherence to Roman legal standards is not surprising in these particular cases. Both parties to the *societas* were Roman citizens, and the contracts of employment seem to have followed a general pattern of state-run mining; the observation that the same wages were offered in the far away quarry Mons Claudianus in Egypt suggests that much.[49] As soon as we turn to the legal dealings of other people, we encounter more complex phenomena. A good example is IDR i. 36, a sales contract of 139 CE:

> Maximus son of Bato has bought and accepted through mancipation a girl by name Passia, or if she is (known) by any other name, more or less around six years old, having been bought as a foundling, for 205 Denarii, from Dasius son of Verzo, a Pirustan from Kavieretium. It is vouched for that this girl is healthy, not charged with theft and damage, and neither a fugitive nor a truant. If anyone shall have claimed back this girl or a portion of her, as a result of which it is not legal for Maximus son of Bato or him to whom the affair will be relevant to hold and possess her rightfully, in that case Maximus son of Bato has requested in good faith that the exact sum and an equivalent amount be paid, and Dasius son of Verzo, a Pirustan from Kavieretium, has promised in good faith. And Dasius son of Verzo said that he received and has for this girl, who is written above, 205 Denarii from Maximus son of Bato.
>
> (Seals of) Maximus son of Venetius, leader; Masurius son of Messius, *decurio*; Anneses son of Andunocnetes; Planius son of Verzo from Sclaies; Liccaius son of

[48] Gaius iii. 92–93; cf. E. A. Meyer, *Legitimacy and Law in the Roman World. Tabulae in Roman Belief and Practice* (Cambridge, 2004), 115–16.
[49] H. Cuvigny, 'The Amount of Wages Paid to the Quarry-Workers at Mons Claudianus', *Journal of Roman Studies* lxxxvi (1996).

> Epicadus from Marcinium; Epicadus son of Plarens, also called Mico; Dasius son of Verzo, himself the seller.[50]

Both parties to the transaction were apparently peregrines; Dasius belongs to the (originally Dalmatian) tribe of the Pirustans known to have inhabited the region. That he was a professional slave-dealer is obviously possible, but it cannot be proven.[51] The conditions are not unusual for contracts recording slave sales. The 'edict of the curule *aediles*' demanded that sellers should announce some basic defects such as illness or noxal liability, but this did not lead to completely standardized warranties. How much had to be offered to find a buyer certainly depended on the market situation. In general, the Dacian texts leave the buyer with more security than contemporary Egyptian documents.[52]

More problematic are the descriptions of the act of transmission: *emit mancipioque accepit* ('bought and accepted through mancipation'), sometimes (IDR i. 37 and 38) with an added reference to the fact that the slave was 'handed over' (*traditus/a*). It combines two rather different ways of transferring property: The contractual sale (*emptio venditio*), where the goods

---

[50] Tab. 1: *Maximus Batonis puellam nomine Passiam, sive ea quo alio nomine est, annorum circiter p(lus) m(inus) sex empta sportellaria emit mancipioque accepit de Dasio Verzonis Pirusta ex Kaviereti[o] (denariis) ducentis quinque. Iam puellam sanam esse a furtis noxique salutam, fugitivam erronem non esse praestari. Quot si qui eam puellam partemve quam ex eo quis evicerit, quominus Maximus Batonis quove ea res pertinebit habere possidereque recte liceat, tum quanti ea puella empta est, tam pecuniam et alterum tantum dari fide rogavit Maximus Batonis, fide promisit Dasius Verzonis Pirusta ex Kaviereti. Proque ea puella, quae s(upra) s(cripta) est, (denarios) ducentos quinque accepisse et habere se dixit Dasisu Verzonis a Maximi Batonis.*
Tab. 2: *Maximi Veneti principis, Masuri Messi dec(urionis), Anneses Andunocnetis, Plani Verzonis Sclaietis, Liccai Epicadi Marciniesi, Epicadi Plarentis qui et Mico, Dasi Verzonis ipsius venditoris*.

[51] W. V. Harris, 'Towards a Study of the Roman Slave Trade', *Memoirs of the American Academy in Rome* xxxvi (1980), 131 deduces this from his supposed origin outside the province, but a Pirustan in Alburnus Maior is not at all surprising; cf. E. Pólay, 'Die Zeichen der Wechselwirkungen zwischen dem römischen Reichsrecht und dem Peregrinenrecht im Urkundenmaterial der siebenbürgischen Wachstafeln', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* lxxix (1962), 143; I. Piso, 'Gli Illiri ad Alburnus Maior', in G. Urso (ed.), *Dall'Adriatico al Danubio. L'Illirico nell'età greca e romana* (Pisa, 2004).

[52] For the edict see M. H. Crawford, *Roman Statutes* (London, 1996), 204 no. 245; for its purpose, E. Jakab, 'Sale and Community from the Roman World', in E. Jakab (ed.), *Sale and Community Documents from the Ancient World. Individuals' Autonomy and State Interference in the Ancient World* (Trieste, 2015), 226–28; for comparison of the warranties, P. Arzt-Grabner, '"Neither a Truant nor a Fugitive": Some Remarks on the Sale of Slaves in Roman Egypt and Other Provinces', in T. Gagos (ed.), *Proceedings of the Twenty-Fifth International Congress of Papyrology* (Ann Arbor, 2010); for a list of the warranties given in Herculanum, G. Camodeca, 'Tabulae Herculanenses: riedizione delle emptiones di schiavi (TH 59–62)', in U. Manthe and C. Krampe (eds.), *Quaestiones Iuris. Festschrift für Joseph Georg Wolf zum 70. Geburtstag* (Berlin, 2000), 74–76.

(in this case a slave) were simply handed over upon receipt of money (*traditio*), and the *mancipatio* — a ritualized procedure to transfer property into the hand (*manus*) of the buyer, involving only a symbolic payment.[53] The latter way of transferring property is usually regarded as much older, with some scholars tracing its origins back to magic rites.[54] It was an oral procedure, to be performed in front of at least five witnesses and a scale holder (*libripens*). Here, we have a written record with seven signatures, including the seller. While there is no mention of a *libripens*, it cannot be excluded that one of the six witnesses has fulfilled this function. In any case, the clear statement of the text is that Maximus and Dasius, in addition to the contractual sale, have performed a procedure of transferring property that they regarded as a *mancipatio*, as a separate act from the sale itself. Other contracts from Alburnus Maior even mention a symbolic payment of two ounces, which suggests that an actual procedure took place.[55] There is thus no indication that the formula was meant as a hendiadys, as has been argued to save it from recording a 'faulty' or at least unnecessary operation.[56]

The formula *emisse mancipioque accepisse* is attested in an earlier document from Herculaneum (TH 61),[57] so the combination of contractual sale and *mancipatio* was not a Dacian innovation. But neither was it a necessary formula: In a contemporary wax tablet found in Egypt, but documenting a transaction carried out by two foreigners in Ravenna (FIRA iii. 134), the slave girl in question was simply 'sold and given over' (*vendidi et tradidi*).[58] The

[53] Gaius i. 119 describes the *mancipatio* as a sort of imaginary sale. On the problem of the Dacian combination, see G. Ciulei, *Les triptyques de Transylvanie* (Zutphen, 1983), 18–38; E. Jakab, *Praedicere und cavere beim Marktkauf. Sachmängel im griechischen und römischen Recht* (Munich, 1997), 167–68; on the whole complex, S. Romeo, *L'appartenenza e l'alienazione in diritto romano. Tra giurisprudenza e prassi* (Milano, 2010), 123–357.

[54] On this (old) theory, see K. Tuori, 'The Magic of *mancipatio*', *Revue Internationale des droits de l'Antiquité* lv (2008).

[55] This is how the phrase *apochatam pro uncis duabus* is normally explained: IDR i. 37 (142 CE); 38 (160 CE); cf. Ciulei, *Les triptyques de Transylvanie*, 22.

[56] By V. Arangio-Ruiz, *La compravendita in diritto romano* (2nd ed. Napoli, 1987), 187.

[57] Dated to 63 CE, re-edited by Camodeca, 'Tabulae Herculanenses', 66–70. Unlike the Dacian documents, this one explicitly mentions a *libripens*.

[58] The text, Latin written in Greek letters, has been discussed in detail by A. Söllner, 'Der Kauf einer Sklavin, beurkundet in Ravenna um die Mitte des 2. Jahrhunderts n. Chr.', in H. Bellen and H. Heinen (eds.), *Fünfzig Jahre*

Dacian tablets, where *emit mancipioque accepit* is the standardized form, raise additional questions, for *mancipatio* was a legal device only available to Roman citizens and peregrines with a special status (possessing the *ius commercii*). All the Dacian *mancipationes* were performed by people to whom these conditions did not apply.[59] *Mancipatio* was also limited to a certain number of goods, the *res mancipi*: According to Gaius (ii. 18–22), these included slaves, animals, and properties on Italian soil. And yet in 159 CE, a woman called Andueia 'bought and received through mancipation' half a house situated 'in Alburnus Maior, in the *vicus* of the Pirustans' (IDR i. 39). The non-Roman inhabitants of Alburnus Maior and its environs thus not only made routine use of a Roman legal procedure not available to them, but also applied it to things not covered by that procedure.

An approach based on Roman legal expectations may try to rectify this seemingly problematic situation. Thus, it has been suggested, without any evidence, that Alburnus Maior as a whole had received the *ius Italicum* and that its inhabitants, while peregrines, therefore enjoyed a special legal status.[60] However, once the conceptual separation between Eastern and Western reception of Roman law is called into question, the Dacian evidence fits another pattern: Provincials using elements of Roman law for their own purposes, transcending the status barriers traditionally connected to those elements. People like Dasius or Andueia do not seem far removed from Babatha in their perception of Roman law (the difference being that in the Dacian cases, the documents attest to the actual effectiveness of actions based on that perception). None of these locals were obliged *by Romans* to use Roman law, and we cannot

Forschungen zur antiken Sklaverei an der Mainzer Akademie 1950–2000. Miscellanea zum Jubiläum (Stuttgart, 2001).

[59] On the people involved, see E. Pólay, 'Der *status civitatis*, der Ursprung und die Berufe der in den siebenbürgischen Wachstafeln vorkommenden Personen', *Journal of Juristic Papyrology* xvi–xvii (1971).

[60] E. Weiß, 'Peregrinische Manzipationsakte', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* xxxvii (1916); revived by Meyer, *Legitimacy and Law*, 182. Pólay, 'Zeichen der Wechselwirkungen', 63–67 had already assembled counterarguments.

know whether or not they were ever likely to end up before a Roman court.[61] But the legal culture at a given time and place could still demand inclusion of Roman legal concepts even if that meant 'abusing' them from a traditional viewpoint. Roman law was a repository providing people with a large amount of contractual elements — stipulations of various sorts, warranties, ways of transferring ownership. But which elements were chosen was a matter neither of strict obligation nor of mere individual preferences, but determined by regionally contingent ideas of what constituted law, and specifically 'Roman law'.

Much like in the case of Arabia, we may ask how these ideas got to Dacia in the first place. The new province quickly attracted merchants from several regions of the empire, particularly from its Eastern parts.[62] These people may have brought their own understanding of the laws of commerce with them. However, as the tablets discussed here show us the legal dealings of either locals or immigrants from neighboring regions like Dalmatia, this must remain speculative. Legal experts and scribes were certainly available either in the military or elsewhere. Thus employment contracts are written by a third person because the employees were illiterate (IDR i. 40–42). Actual knowledge of legal formalities may have been limited to a few people who then offered their service. A final example from the tablets may support this. Two contracts of slave sale (IDR i. 37 and 38) include the additional element of a third person acting as guarantor (*fideiussor*) on behalf of the buyer. In one case, IDR i. 38 of 160 CE, the signature of the *fideiussor* is quite remarkable: ΑΛΕΞΑΝΔΡΥΣ | ΑΝΤΙΤΑΤΡΙ | ΣΕΚΟΔ - ΑΥΚΤΩΡ | ΣΕΓΝΑVI. Among the seven signatures at the end of the document, this is the only one that needs not one line, but four; it is also the only one in Greek letters. The man, undoubtedly called Alexandros son of Antipatros, can hardly spell his name. Still, he managed

[61] Pólay, 'Obligationssicherheit', 143 and 'Zeichen der Wechselwirkungen', 68–69 presupposes that the cases discussed here would have been brought before a peregrine court if conflicts arose. Ciulei, *Les triptyques de Transylvanie*, 27–28 connects the judicial context closer with the military.

[62] See F. Matei-Popescu, 'The Origin of the Tradesmen in Dacia', in D. Boteva-Boyanova, L. Mihailescu-Bîrliba and O. Bounegru (eds.), *Pax Romana: Kulturaustausch und Wirtschaftsbeziehungen in den Donauprovinzen des römischen Kaiserreiches* (Kaiserslautern, 2012).

to write something approximating the Latin phrase *secundus auctor signavi* ('I have signed as second transactor'). It seems legitimate to assume that Alexandros, who may have acted upon oral instructions, was not quite aware of the legal details involved, namely the trend (later labelled by the jurist Ulpian as 'popular' or 'vulgar', *Digest.* xxii. 2. 4pr) to regard the guarantor of a transaction as an additional, secondary party.[63] And yet we can imagine that participation in a solemn procedure performed according to Roman law in the most ostensive of ways felt important, and perhaps empowering.

The Dacian evidence is exceptional for the Western provinces, where environmental conditions have prohibited any large scale preservation of private documents. And yet, there is reason to assume that what we witness here has much less to do with the region's peculiar position between East and West than has sometimes been assumed. On the contrary, we suggest that the legal culture of the Dacian tablets was not an anomaly, but the default option of private people when they deal with Roman law. This case can be made, as we have done so far, by applying insights gained from a study of the Eastern data, but it can also be strengthened by incorporating an increasing amount of evidence from another, and perhaps somewhat unlikely Western province: Britain.

After some early campaigns by Julius Caesar, Britain was conquered under Claudius in 43 CE, and became a province in 49. And just as in Arabia or Dacia, we can grasp the spread of Roman legal institutions in the second generation at the latest — at a time, it should be noted, that predates most of our evidence for Roman 'law in the books'. The use of 'proper' *stipulatio*-formulae is attested by a recently published document from London, dated by the editor to 65–80 CE:

[63] See Pólay, 'Obligationssicherheit', 156.

> To Narcissus (the slave) of Rogatus the Lingonian, Atticus … has properly, truly, faithfully promised (it is) to be given, to Ingenuus … or to him to whom the matter will pertain.[64]

Another document, dated only roughly to the first or second century, shows an indigenous slave-owner who had recently become a Roman citizen urging his slaves (in Latin) to sell a girl;[65] one fragmentary text has been argued to be a list of originally seven witnesses;[66] another, of 118 CE, uses 'legalistic language' to refer to an already accomplished sale of a property.[67] While the latter document potentially stems from a Roman administrative context and might thus only show, unsurprisingly, that Roman magistrates employed Roman legal concepts, the other cases are different. Rogatus the Lingonian and his slave were neither Roman magistrates nor Roman citizens. And the same is true for both parties in the most spectacular text from Roman London, written on a tablet dated to 75–125 CE and originally published in 2003:

> Vegetus, the *vicarius* of Montanus Iucundianus, slave of the imperator Augustus, has bought and accepted through mancipation the girl Fortunata, or if she is known by any other name, of Diablintian origin, from Albicianus Leg… for 600 Denarii. It is vouched for that this girl in question is transferred in good health and neither a fugitive nor a truant, and that if anyone shall have claimed back this girl in question or a part of her, as a result of which Vegetus, the *vicarius* of Montanus,

[64] Tomlin, *Roman London's First Voices*, WT 55: *... Nar[cisso] Rogati Lingonis [rec]te [p]robe dari fide promis{s}it Atticus - - [I]ng[e]nuo - -illis eive ad quem ea res pertinet.* Transl. by Tomlin.
[65] Ed. pr. I. A. Richmond, 'Three Roman Writing-Tablets from London', *Antiquaries Journal* xxxiii (1953); cf. the discussion by L. J. Korporowicz, 'Buying a Slave in Roman Britain. The Evidence from the Tabulae', *Revue Internationale des droits de l'Antiquité* lviii (2011), 214–16.
[66] Tomlin, *Roman London's First Voices*, WT 62. Only four names are preserved; the assumption that there were originally seven is obviously based on the expectation that it was a legal document drawn up according to Roman rules.
[67] *Année épigraphique* 1994, 01903; cf. for discussion and interpretation (notes of a land surveyor?) P. du Plessis, 'Return to the Wood in Roman Kent', in Jakab (ed.), *Sale and Community Documents* (quotation 173).

the slave of the imperator Caesar, or he to whom the affair will be relevant will not be allowed to have and to possess her rightfully, …[68]

The binding of the tablets in this case does not follow Nero's law of 61 CE.[69] This might indicate an earlier date than the one assumed by the editor, but is perhaps better explained by a lack of any official pressure to conform to that pattern. Such lack of oversight should not be surprising. For Vegetus' declaration not only shows that in Britain just as in Dacia, the edict of the curule *aediles* — or at least some of its elements — were regarded as helpful for setting up the conditions of slave sales relatively soon after the region became a province. It also shows the same 'abuse' of a legal institution already noted above. The previous owner of Fortunata does not seem to have been a Roman citizen, and Vegetus is the slave of an imperial slave — and yet, just like the provincials in Dacia, he nevertheless claims to have accepted the girl through *mancipatio*. From the perspective of classical Roman law, we are again dealing with an inconsequential legal document.

The close similarities especially between the Fortunata tablet and the Dacian ones allow for the reconstruction of a pattern — but the problem remains how to describe that pattern. One prominent description focuses on terms like 'abuse' and 'degeneration'. Legal institutions reserved for Roman citizens were 'abused' by people who were not supposed to employ them, hence the documents show a 'degenerated' form of the institution.[70] But how useful is a concept

[68] *Vegetus Montani imperatoris Aug(usti) ser(vi) Iucundiani vic(arius) emit mancipioque accepit puellam Fortunatam sive quo alio nomine est natione Diablintem de Albiciano LEG[...] (denariis) sescentis ea(m)que puella(m)que de qua agitur sanam traditam esse erronem fugitivam non esse praestari quod si qu[i]s eam puellam de qua agitur part[em]ve quam [quis ex] ea e[vi]cerit, quo m[i]nu[s Vege]tum M[ontani imp(eratoris)] Caesaris ser(vi) [vi]c(arium) eu[mv]e [a]t que[m] ea res [pertinebit, habere possidereque recte liceat (vel sim.) ...]*. Ed. pr. R. S. O. Tomlin, '"The Girl in Question": a New Text from Roman London', *Britannia* xxxiv (2003); our text takes into account the altogether more plausible reconstruction of the lower half by G. Camodeca, 'Cura secunda della tabula cerata londinese con la compravendita della puella Fortunata', *Zeitschrift für Papyrologie und Epigraphik* clvii (2006) (but note that his solution requires some inconsistency in the reference to Montanus, once as *imperatoris Aug. ser.*, once as *imp. Caesaris ser.*).

[69] Noted by Camodeca, 'Cura secunda', 225 n. 1.

[70] E.g. E. Pólay, 'Verträge auf Wachstafeln aus dem römischen Dakien', *Aufstieg und Niedergang der römischen Welt* ii, 14 (1982), 519; Ciulei, *Les triptyques de Transylvanie*, 39; M. Nowak, 'Mancipatio and its Life in Late-Roman Law', *Journal of Juristic Papyrology* xli (2011), 112–13.

like ‘degeneration’ when these documents not only seem to have fulfilled their function, but also seem to represent a normative legal culture of its own sort? In the Dacian tablets, the same argument applied above to warranties on slave sales is applicable to *mancipatio*: They were elements of Roman law not demanded by Roman administrators, but apparently judged obligatory by the parties of the transactions. If a ‘faulty’ application of Roman law becomes the only possible way to sell a slave or buy a house in a provincial context, our own assumptions about proper use of Roman law are rather irrelevant. Clearly, what is useful as a legal descriptor is not necessarily helpful as a historical category. When every single *mancipatio* attested in the Western provinces has to be classified as invalid, the classification system itself might be the problem.

Other theories try to remedy the situation by ‘normalizing’ the evidence. While the claim, noted above, that Alburnus Maior had a special legal status becomes all the more problematic in light of similar evidence from London, other ideas are more appealing. Thus, the documents can legitimately be argued to be not contracts in a strict sense, but proof of a transaction already carried out; their legal value would thus not depend on the way the property was transmitted.[71] And yet, the problem remains that stressing *mancipatio* was important to all participants in their description of the transaction. It has also been argued that *mancipatio* was not actually performed by any of the parties involved, because it had already fallen out of use even at Rome.[72] The phrase ‘s/he bought and accepted through mancipation’ would thus be nothing more than a faint echo, taken over from rulebooks which, we would have to assume, were severely outdated. However, while both handbooks and deliberate attempts to echo Roman procedures should be granted,[73] we have seen that there is no good reason to assume that

[71] Jakab, *Praedicere und cavere*, 168–69 on the Dacian texts.
[72] Nowak, ‘Mancipatio and its Life’, in the end prefers this solution to the degeneration model.
[73] Summarized by Jakab, ‘Sale and Community’, 221: ‘Depicting their business, obviously the parties and the scribes convulsively hold on [to] classical Roman patterns but cared not even [for] basic legal capacities like citizenship’.

mancipatio was not actually performed. And while a rarity of occurrences in Italy may be granted, its attestation in the Western provinces actually raises a rather different prospect, one where provincials in Britain and Dacia behave more 'Roman' in their legal dealings than Roman citizens in Italy.[74]

This latter suggestion may push the argument a bit too far, but the point is simple: There is no obvious solution that allows us to do away with provincial agency and appropriation. Can we, then, deduce from the wooden tablets of Dacia and Britain that 'clearly Roman law applied'?[75] It would seem that as a description at least of certain market areas, the sentence holds true: Selling a slave or a house in Alburnus Maior probably made it necessary to conform to the peculiar idea of Roman law prevalent at this time and place. And yet, when this is regarded as evidence for 'the Romanization of the new province, one of whose principal means was imposing the obligation to make use of the Roman legal order',[76] the approach set out here forces us to emphatically disagree with the latter part of this description. Similarly, while it is easy to accept the suggestion that we should understand documents like the Fortunata tablet as 'a visible sign of the effectiveness of Roman law in Britain',[77] we still have to ask what is meant by effectiveness. Is it a quality of Roman law itself, a judgment about Roman control over a given region, or a description of provincial agency? A full picture would undoubtedly have to take into account all three aspects. Based on the evidence discussed above, there is no reason to limit the latter part of the triad to some exceptional regions in the Eastern half of the empire.

[74] Meyer, *Legitimacy and Law*, 182–83 stresses the conservatism of provincial legal practice (which preserved a legal form 'as it existed when the Romans had arrived'). However, the documents discussed here all stem from the first or second generation after provincialization, allowing little time for asynchronous developments.
[75] Wolf, 'Documents in Roman Practice', 67.
[76] *Ibid.*
[77] Korporowicz, 'Buying a Slave', 224.

4. Conclusion

We have argued that the Western data can productively be approached from a methodological standpoint that has found more widespread acceptance for the East. This assumes a greater level of sophistication and provincial agency than is often allowed to the Western inhabitants of the empire. The majority of the evidence that we have discussed is drawn from the first two generations after annexation, allowing us to trace how provincials adapted in the (almost) immediate aftermath of the coming of Rome. Our approach allows Western inhabitants of the empire, like their Eastern counterparts, to view Roman law as a tool that could be deployed to varying effect in their legal transactions. One consequence of this is that they regularly transgress status boundaries, taking part in transactions and employing legal instruments that — on the traditional viewpoint — were reserved for Roman citizens. By doing so, they in turn assert a higher status than they in fact possess: They may not lay claim to citizenship, but they do appropriate instruments of an imperial legal order in ways that project a certain understanding of their own rights and privileges. Their utilization of these instruments could then in turn become an accepted part of the local legal culture.

Looking back on some of the developments in the debate on Romanization and imperial identities mentioned at the beginning of this article, we have highlighted how the application of law can be regarded as one of several vehicles for local reproductions of an imperial ideology. Not every aspect of this ideology is faithfully replicated — status boundaries, for example are very obviously transgressed — but the symbol of Rome as a guarantor of security, stability, and validity is a constant throughout. Provincials do, therefore, buy into some aspects of the Roman ideology surrounding their law. Our approach may thus serve to reintroduce law into a broader concept of Romanization while avoiding the pitfalls traditionally connected with such attempts.

And yet, by doing so, we also need to reassess the implications such an 'anything goes'-approach might have for the meaning of a rather diffuse concept like the 'Roman ideology' that has just been mentioned. The study of legal institutions, despite their normative pretensions and their intimate connection to ideologies of order and control, proves to be a surprisingly straightforward path to questioning the very notion of 'Romanness'. Provincial agency as understood here could create alternative and perhaps competing versions of what it meant to use Roman law. Defining authentic Roman tradition (the law of the jurists) and explaining deviations from it as 'abusive' or 'degenerated' may satisfy our own demands for clarity and order, but hardly contributes to an historical assessment of provincial experiences. It also by necessity introduces a hierarchical centre-periphery divide, and one may ask whether this way of thinking might itself be labelled a 'reproduction of Roman ideology'. Neither Roman political dominance nor the Roman origin of the practices discussed here can be doubted, and we emphatically do *not* suggest a disjunction between law and empire. However, the evidence adduced here shows how 'Romanness' was constructed by provincials on their own terms.

This also has several repercussions for assessing the impact of the *Constitutio Antoniniana*. There are good reasons to regard the almost universal grant of citizenship in 212 CE as a major step in the development of Roman imperial ideology.[78] In the legal sphere, many more people were suddenly able (and obligated) to use legal institutions defined by Roman jurists. And yet we have seen that status barriers did not keep provincials from using their versions of 'Roman' law before 212. The conceptual and practical challenges of integrating indigenous legal traditions as 'customary law' into Roman legal discourse have often been studied. Similar questions should be asked regarding the multifaceted 'Roman laws' that had developed in the

[78] Its significance has at times been denied, based on calculations suggesting that the majority of the free population already consisted of Roman citizens in 212. For a critique of such views and an exhaustive set of criteria to be considered, see M. Lavan, 'The Spread of Roman Citizenship, 14–212 CE: Quantification in the Face of High Uncertainty', *Past & Present* ccxxx (2016).

provinces. What happened when an emerging concept of Roman imperial law met 'Roman law'? While painstaking analysis of such constellations must ultimately be left to legal scholars, historians cannot afford to ignore their findings.

Finally, we should not be oblivious to the problems that come with the approach advocated here, two of which deserve to be highlighted at the end of this article. One is a simple, but forceful counter-argument based on content: The spheres of law we have been looking at are quite different for East and West. While the aspects highlighted in the Near Eastern evidence — the ones we used to develop our general approach in the first place — mostly relate to what may be labeled the law of persons, the Western documents are exclusively concerned with the law of commerce. It is reasonable to assume that the latter sphere of law is generally more likely to undergo standardization in a rather short amount of time, and the relevance of laws of commerce for actual legal purposes (what belongs to whom?) makes the issue of enforceability a more pressing one here than in other cases. Clearly, we would have wished for a variety of documentation in the Western provinces comparable to the East. But the contracts make up the corpus of evidence that is there, and instead of categorically excluding comparisons, we have tried to show how provincial agency can be traced in these documents as well. That some additional factors have to be brought into the picture, most pressingly the importance of the market situation and the use of handbooks, does not *a priori* invalidate the findings generated here.

The second problem relates more broadly to the different historical settings. It would be foolish to deny that when provincials in the East encountered Roman law, they started on a different footing from their counterparts in the West. The Ptolemaic administration had developed bureaucratic legal procedures in Egypt, and the Nabatean kingdom also had a functioning and complex legal tradition prior to the Roman conquest. While we have to assume that Britons and Dacians also had their traditional ways of solving legal problems, nothing comparable is

known from these regions. The idea that Roman law was used here, at least in part, for the simple reason that it was objectively superior to anything offered by local legal traditions cannot be dismissed lightly. However, even if this argument were pushed to its limits, it would still take local agency to acquire the necessary knowledge to realize this. And on a more abstract level, the processes described here — in particular the transgression of status boundaries and the implicit replication of certain aspects of imperial ideology — would remain the same. In short: This is what the evidence shows us actually happened, and any interpretation must fully acknowledge and incorporate this.